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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,135	09/29/2003	Michael J. Brookman	30810/39676A	5725
4743	7590	01/07/2008	EXAMINER	
MARSHALL, GERSTEIN & BORUN LLP 233 S. WACKER DRIVE, SUITE 6300 SEARS TOWER CHICAGO, IL 60606			DIXON, ANNETTE FREDRICKA	
			ART UNIT	PAPER NUMBER
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			01/07/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/675,135	BROOKMAN, MICHAEL J.
	<b>Examiner</b>	<b>Art Unit</b>
	Annette F. Dixon	3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 29 October 2007.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-4 and 6-28 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-4 and 6-28 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

1. This Office Action is in response to the request for continued examination filed on October 29, 2007. Examiner acknowledges claims 1-4, and 6-28 are pending in this application, with claims 1, 8, and 9 having been currently amended, and claims 25-28 having been newly added.

### ***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 29, 2007 has been entered.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 1-4, 6, 9, 10, 13-15, 17, 18, 20, 21, 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mucha (DE19503027) in view of Hilton et al. (EP 0 241 188 A1).

As to Claims 1, 9, and 23-26, Mucha discloses a breathing apparatus comprising: a tank (9) adapted to contain air under pressure to enable the delivery of said pressurized air to the user of said apparatus during a clean air mode; a filter system (7) adapted to enable ambient air to pass through a filter medium to delivery filtered air to said user of said apparatus during a filtered air mode, the filter medium having a mesh that is sufficient to one of trap solid particles in ambient air and enable ambient air in need of cleaning to have a residence time in contact with media that is sufficient to decontaminate contaminating vapors and gases From said ambient air to form clean air; a means for moving said ambient air (8') into said filtering system (7), through said filter medium in said filtering system (7) and thence into operative relationship with a user of the apparatus during said filtered air mode; a valve assembly (4) comprising a first valve (22) associated with said tank (9) and a second valve (23) associated with said filter system (7), the valve assembly (4) adapted to control the flow of cleaned air from said filter system into said filtering mode and pressurized air from said tank in said clean air mode, such that said pressurized air supplied from said tank opens said first valve (22) and closes said second valve (23) to actuate said valve assembly (4) from the filtered mode to the clean air mode while continuously providing a supply of breathable air to the user; and a first switch (11) operatively coupled to the tank (9) and selectively enabling switching between the clean air mode and the filtered air mode (via

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communication with elements 12 and 13 to move the valve assembly). Yet, Mucha does not expressly disclose a pressure regulator. However, at the time the invention was made the use of pressure regulators was known. Specifically, Hilton teaches a regulator means (34) to enable delivery of said pressurized gas to a user of said apparatus for the purpose of regulator means (34) of Hilton et al. is to reduce the pressure of the breathable gas leaving pressurized tank (33) so that it may be delivered to a user at a safe pressure. Therefore, it would have been obvious to modify the pressurized tank of Mucha to employ a regulator means, as taught by Hilton et al to reduce the pressure of the breathable gas leaving pressurized tank so that it may be delivered to a user at a safe pressure.

As to Claims 2, 11, 12, and 14, Hilton et al. (fig.7) teach plural filter media (9), which is sufficient to trap particulates.

As to Claims 3 and 10, Hilton et al. (figs.4-6,8,9) teach a mask adapted to establish and maintain a seal with the face of a user so as to isolate at least the nose and mouth of said user from ambient air, and adapted to maintain a seal under conditions of positive pressure within the mask (note separate valves for exhalation and inhalation).

As to Claims 4, 13, 17, 18, 20 and 21, Mucha (fig.1) discloses a first conduit (6) disposed in operative relationship to and between said cylinder (9) and said mask (1), said second conduit means (5) being disposed between said filter system (7) and said mask (1), and said at least one valve (4) is adapted to control the flow of cleaned air

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from said filter system and/or pressurized breathable gas from said cylinder to said mask.

As to Claims 6 and 15, Hilton et al. teach a one-way exhaust valving means (4) operatively associated with the mask and operative when a user exhales whereby increasing the internal pressure in said mask above the pressure imposed by said powered forcing of ambient air through said filter system, and above the pressure imposed by gas being fed from said cylinder.

5. Claims 7, 8, 16, 19, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mucha (DE19503027) in view of Hilton et al. (EP 0 241 188 A1) as applied to claim 1 and 9 above, and further in view of Bartels & Rieger (DE 3,512,644).

As to Claims 7, 8, 16, 19, 22, 27 and 28, the system of Mucha/Hilton et al. discloses all of the recited elements, yet does not expressly disclose a means for manually opening or closing said at least one valve by said user. However, at the time the invention was made, the use of a manual user-operated valve was known. Specifically, Bartels & Rieger teaches manually increasing the flow of gas from a gas cylinder (11) by opening a valve (19). The purpose of providing a manually actuated valve is to provide a user with means for switching between a filtered air source and a compressed air source thereby enabling a user to conserve the compressed air source for as long as possible (see abstract). Further, one of ordinary skill would recognize that the amount of oxygen required by users differs from one person to the next; consequently, a wearer may prefer to have manual control over when and how much

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oxygen is dumped into the system. Therefore, it would have been obvious to further modify Mucha to include a manually operated valve that selects between the compressed air source and the filtered air source because it would have provided a user with means for switching between a filtered air source and a compressed air source thereby enabling a user to conserve the compressed air source for as long as possible as taught by Bartels & Rieger.

### ***Response to Arguments***

6. Applicant's arguments filed October 29, 2007 have been fully considered but they are not persuasive. Applicant asserts: 1) the prior art made of record does not teach or fairly suggest a valve assembly having a first and second valve in which when the first valve is open the second valve is closed, and 2) the combination of Mucha and Hilton is improper. Examiner respectfully disagrees.

Regarding Applicant's first assertion, Mucha discloses the valve assembly (4) as seen in Figure 2, wherein pistons are utilized to control the flow of gases from one line to the user. As seen in Figure 2, element 22 has closed off conduit 6 (leading to the tank), while leaving conduit 2 (leading to the mask) and conduit 5 (leading to the filter system) open. Intrinsically, the ability of these pistons to shift operates as a valve mechanism to prevent the passage of fluid from the conduit to the user; thereby, enabling selective engagement of the mask to the two fluid sources.

Regarding Applicant's second assertion, the Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the

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prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the combination of Mucha and Hilton is used simply to teach the use of first stage or step down regulators to reduce the pressure within a pressurized tank to a safely breathable pressure for a user.

Thus, in light of the aforementioned reasoning, the rejection of the claims has been maintained.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette F. Dixon whose telephone number is (571) 272-3392. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
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Art Unit 3771

  
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1/31/08